

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CRAIG SMALLS, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

TRUEBLUE, INC., a Washington corporation;
LABOR READY MID-ATLANTIC, INC., a
Washington corporation; and FIRST
ADVANTAGE BACKGROUND SERVICES CORP.,
a Florida corporation,

Defendants.

NO. C15-5126 RBL

MOTION TO TRANSFER VENUE TO THE
WESTERN DISTRICT OF NORTH CAROLINA

HEARING DATE: **May 15, 2015**

I. RELIEF REQUESTED

TrueBlue, Inc. ("TrueBlue") and Labor Ready Mid-Atlantic, Inc. ("Labor Ready") (collectively "Defendants") respectfully move the Court, pursuant to 28 U.S.C. §1404(a), to transfer venue of this action to the United States District Court for the Western District of North Carolina, Charlotte Division for the convenience of the parties and in the interest of justice. In the alternative, TrueBlue and Labor Ready move the Court, pursuant to the same statute, to transfer venue of this action to any other appropriate district within North Carolina. The motion and alternative motion are supported by the authorities set

MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 1 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 forth below, the declaration of Marquia Verrett, and Plaintiff Craig Smalls' complaint and
2 exhibits attached thereto.

3 II. INTRODUCTION

4 Craig Smalls ("Smalls") brings this putative class action in the United States
5 District Court for the Western District of Washington, Tacoma Division, complaining that
6 Labor Ready Mid-Atlantic and TrueBlue violated the Fair Credit Reporting Act, 15 U.S.C. §
7 1681 et seq. ("FCRA"). Specifically, Smalls alleges that Defendants violated the FCRA by
8 failing "to provide proper notices, disclosures, and requested documents as required
9 under the FCRA" in connection with a background check Labor Ready initiated when
10 Smalls applied to become a Labor Ready temporary employee. Complaint, at p. 1 and ¶¶
11 22-23.

12 Defendants request that the Court transfer venue of this action to the United
13 States District Court for the Western District of North Carolina, Charlotte Division for the
14 convenience of the parties and in the interest of justice. Pursuant to a dispute resolution
15 agreement between the parties, Defendants and Smalls have agreed to arbitrate any
16 disputes in North Carolina. Accordingly, Defendants will seek, at the appropriate future
17 time, to compel Smalls to arbitrate in North Carolina his claims against Defendants.
18 However, since binding Ninth Circuit authority prevents this court from compelling an
19 arbitration outside this district, only a judge sitting in a North Carolina district court can
20 effectuate the parties' agreement.

21 Additionally, even before analyzing the typical factors used to decide whether to
22 transfer venue, the existence of a forum selection clause in an agreement between the
23 parties establishes that North Carolina is the appropriate venue for this case. Except in
24 the rarest circumstances not applicable here, such forum selection clauses are entitled to
25 controlling weight in determining the appropriate venue.

26
MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 2 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 Finally, the multi-factored test weighs heavily in favor of transferring this case to
 2 North Carolina. All of the events upon which Smalls bases his claims occurred in that
 3 state. The relevant witnesses for both sides live in the state and the relevant documents
 4 are there too. In light of the forum selection clause, the fact that Smalls is not a resident
 5 of Washington, and since the case is styled as a class action, Smalls' choice of forum is
 6 to be afforded no weight. Additionally, Smalls has no apparent connection to the present
 7 venue, and the cost of litigating the case in North Carolina will be less than the cost in
 8 Washington.

9 III. STATEMENT OF FACTS

10 Smalls' complaint pleads that he is a citizen of the State of North Carolina.
 11 Complaint, ¶ 10. Smalls applied for employment with Labor Ready at Labor Ready's
 12 North Charlotte branch¹ in October 2014. Declaration of Marquia Verrett ("Verrett
 13 Decl."), ¶ 3. The North Charlotte branch is located in Charlotte, North Carolina. Verrett
 14 Decl., ¶ 2.

15 When Smalls applied for employment at Labor Ready's North Charlotte Branch, he
 16 completed several forms including a Disclosure Regarding Background Information
 17 ("Disclosure") and an At-Will Employment Dispute And Resolution agreement ("Arbitration
 18 Agreement"). Verrett Decl., ¶ 3 and Exhibit A; Complaint, ¶¶ 23-24. The original of those
 19 two documents are kept at Labor Ready's North Charlotte branch in a file containing Mr.
 20 Smalls' employment-related documents. Verrett Decl., ¶¶ 3, 4. As part of the
 21 application process, Mr. Smalls also provided Labor Ready with his contact information,
 22 including his home address. Verrett Decl., ¶ 5. The home address Mr. Smalls provided to
 23 Labor Ready is in Charlotte, North Carolina. *Id.*

25 ¹ Smalls applied to one of the two Labor Ready two branches located in the City of
 26 Charlotte. Labor Ready refers to the branch at which Smalls applied as the North
 Charlotte branch.

Also as part of the application process, Labor Ready performed a background check on Mr. Smalls. Verrett Decl., ¶ 6. For all, including Mr. Smalls, who apply at the North Charlotte branch to work as a Labor ready temporary employee, a permanent employee at the branch initiates the background check. *Id.* The background check is initiated by having the applicant read and sign the Disclosure. *Id.* The permanent employee then obtains pertinent information from the applicant and submits the applicant's information directly from the branch to First Advantage. *Id.* First Advantage returns results of the background check directly to the branch. *Id.*

The Arbitration Agreement contains three main provisions: (1) that Labor Ready and Smalls will arbitrate any claim arising from his employment or application for employment; (2) that the parties may not arbitrate claims on a class or representative basis; and (3) that the arbitration take place in the county where Smalls last worked for the Company. Exhibit A to Verrett Decl. In pertinent part, the Arbitration Agreement states:

2. DISPUTE RESOLUTION.

Agreement to Arbitrate. The Company and I agree that for any claim arising out of or related to my employment, application for employment, and/or termination of employment, this Agreement, or the breach of this Agreement, shall be submitted to and resolved by binding individual arbitration under the Federal Arbitration Act. The Company and I agree that all claims shall be submitted to arbitration including, but not limited to claims based on any alleged violation of any constitution, federal, state, or local law . . .

Scope of Arbitration. The Company and I agree that arbitration in no way limits the relief that any party may seek regardless of the jurisdiction in which arbitration has been filed. THE COMPANY AND I AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN MY OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION OR REPRESENTATIVE PROCEEDING. . .

Arbitration Procedure. . . . Unless the Company and I agree otherwise, any arbitration hearings will take place in the county (or parish) where I last worked for the Company.

MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 4 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 Exhibit A to Verrett Decl.

2 IV. ARGUMENT

3 A. This Case Should Be Transferred To The United States District Court For
4 The Western District Of North Carolina Pursuant To 28 U.S.C. § 1404(a).

5 28 U.S.C. § 1404(a) provides:

6 For the convenience of parties and witnesses, in the interest of
7 justice, a district court may transfer any civil action to any other
8 district or division where it might have been brought

8 28 U.S.C. § 1404(a).

9 Transfers under section 1404(a) routinely are made "to prevent the waste 'of time,
10 energy and money,' and 'to protect litigants, witnesses and the public against
11 unnecessary inconvenience and expense.'" *Van Dusen v. Barrack*, 376 U.S. 612, 616
12 (1964) (quoting *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26, 27 (1960)).

13 "The statute has two requirements on its face: (1) that the district to which
14 defendants seek to have the action transferred is one in which the action might have
15 been brought, and (2) that the transfer be for the convenience of parties and witnesses,
16 and in the interest of justice." *Amazon.com v. Cendant Corp.*, 404 F.Supp.2d 1256, 1259
17 (W.D. Wash. 2005) (citation and quotation marks omitted). Here, as outlined below, both
18 factors are clearly satisfied.

19 B. The Western District Of North Carolina Is A Proper Venue Because It Is A
20 District In Which The Action Might Have Been Brought.

21 Pursuant to 28 U.S.C. § 1404(a), venue cannot be transferred unless the
22 transferee district is either (a) one that the action "might have been brought" or (b) one to
23 which all parties have consented. In this case, the case may be transferred to the
24 Western District of North Carolina because it is a district in which the action might have
25 been brought.
26

MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 5 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 When, as here, the court's subject matter jurisdiction is based on a claim arising
2 under federal law, venue is proper in "a judicial district in which a substantial part of the
3 events or omissions giving rise to the claim occurred" 28 U.S.C. §1391(b)(2). The
4 Western District of North Carolina is an appropriate venue because it is a district in which
5 the case might have been brought insofar as a substantial part of the alleged events or
6 omissions that gave rise to Smalls' claims against Defendants occurred there.

7 Specifically, Smalls alleges that when he applied to work for Labor Ready, he
8 applied to a Labor Ready branch located in Charlotte, North Carolina. Complaint, ¶ 22.
9 When Smalls applied, Labor Ready staff at that branch provided him with a disclosure for
10 the background check. Complaint, ¶ 23; Verrett Decl., ¶ 3. Smalls alleges that the
11 disclosure did not comply with the FCRA. Complaint, ¶ 24. The background check itself
12 was initiated from the Labor Ready branch. Verrett Decl., ¶ 6. Smalls' information was
13 sent directly from the branch to First Advantage. *Id.* After First Advantage completed the
14 background check, it sent the results directly back to the branch. *Id.*

15 Smalls also alleges that later, Labor Ready sent a notice that did not comply with
16 the FCRA. Complaint, ¶¶ 23-31. Smalls attached as Exhibit B to his complaint an alleged
17 copy of the defective notice. The alleged copy of the defective notice was sent to Smalls
18 at an address in Charlotte, North Carolina. Complaint, ¶ 25 and Exhibit B.

19 Smalls' FCRA claims against TrueBlue and Labor Ready are based on the alleged
20 "failure to provide proper notices, disclosures, and requested documents that they are
21 required to provide under the FCRA." Complaint at p. 1. Based on the events described
22 above, Labor Ready initiated the background check in Charlotte and provided Mr. Smalls
23 with the allegedly improper disclosure and notice also in Charlotte. Therefore, it is clear
24 that a substantial part of the underlying claims against TrueBlue and Labor Ready took
25
26

MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 6 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 place in Charlotte, North Carolina. As a result, this action might have been brought in the
 2 Western District of North Carolina and that is a proper transferee district.

3 **C. The Interests Of Justice And The Convenience Of The Parties Support**
 4 **Transferring This Case To The Western District Of North Carolina.**

- 5 1. Transferring the case to the Western District of North Carolina would
 6 allow TrueBlue and Labor Ready to arbitrate Smalls' claims in the
 7 agreed-upon venue.

8 Labor Ready and TrueBlue intend to seek an order to compel Smalls to arbitrate
 9 his claims against them in the place where the parties agreed to arbitrate, namely, North
 10 Carolina. However, pursuant to binding and applicable Ninth Circuit precedent, this Court
 11 is without the authority to compel Smalls to arbitrate his claims in North Carolina. In
 12 *Continental Grain Co. v. Dant & Russell*, 118 F.2d 967 (9th Cir. 1941), the Ninth Circuit
 13 held that the Federal Arbitration Act limits district courts' authority with respect to
 14 compelling arbitration. According to *Continental Grain*, the FAA authorizes district courts
 15 to compel an arbitration to take place only within the district where the motion is made.
 16 *Id.* at 968-69. Thus, according to the Ninth Circuit, the FAA prohibits a court from
 17 ordering parties to arbitrate outside of the district in which a motion to compel is filed.
 18 *Id.*; see also *Lexington Ins. Co. v. Centex Homes*, 795 F.Supp.2d 1084, 1091-1092 (D.
 19 Hawaii 2011) (*sua sponte* ordering venue transferred from Hawaii to a district in Texas
 20 that would to allow the parties to arbitrate according to the parties' agreement).

21 Pursuant to *Continental Grain*, this court is without authority to order the parties to
 22 arbitrate their dispute, as they have agreed to do, in North Carolina. Thus, the interests
 23 of justice favor a transfer to the Western District of North Carolina because doing so will
 24 allow Labor Ready and TrueBlue to compel Smalls to arbitrate his claims in North
 25 Carolina.
 26

MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
 CAROLINA - 7 of 13

(C15-5126 RBL)

LAW OFFICES
 GORDON THOMAS HONEYWELL LLP
 1201 PACIFIC AVENUE, SUITE 2100
 TACOMA, WASHINGTON 98402
 (253) 620-6500 - FACSIMILE (253) 620-6565

- 1 2. The parties' contractual forum selection clause is to be given controlling
 2 weight thus making North Carolina the appropriate venue for this case.

3 Even before analyzing the usual factors to decide whether to allow a venue
 4 transfer, where the parties have contractually designated a forum for their disputes, the
 5 party resisting the clause, bears the burden to show "extraordinary circumstances
 6 unrelated to the convenience of the parties" to overcome the "controlling weight" given to
 7 such a clause. *Atlantic Marine Const. Co., Inc. v. United States Dist. for Western Dist. of*
 8 *Texas*, 571 U.S. ___, 134 S.Ct. 568, 581 (2013). Here, Smalls and Labor Ready entered
 9 into a valid Arbitration Agreement placing the venue for arbitrating their disputes in North
 10 Carolina. The existence of an agreed-upon forum is to be given controlling weight and
 11 argues strongly in favor of transferring the case to North Carolina.

- 12 3. The applicable factors for deciding a motion to transfer venue pursuant
 13 to 28 U.S.C. § 1404(a) weigh heavily in favor of transferring venue to
 14 the Western District of North Carolina.

15 The Ninth Circuit has set forth eight factors to consider to determine whether a
 16 case should be transferred pursuant to 28 U.S.C. § 1404(a). Those factors are:

- 17 (1) the location where the relevant agreements were negotiated and executed;
 18 (2) the state that is most familiar with the governing law;
 19 (3) plaintiff's choice of forum;
 20 (4) the respective parties' contacts with the forum
 21 (5) the contacts relating to the plaintiff's cause of action in the chosen forum;
 22 (6) the differences in the cost of litigation in the two forums;
 23 (7) the availability of compulsory process to compel attendance of unwilling
 24 non-party witnesses; and
 25 (8) the ease of access to sources of proof.

26
 MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
 CAROLINA - 8 of 13

(C15-5126 RBL)

LAW OFFICES
 GORDON THOMAS HONEYWELL LLP
 1201 PACIFIC AVENUE, SUITE 2100
 TACOMA, WASHINGTON 98402
 (253) 620-6500 - FACSIMILE (253) 620-6565

1 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000). When these
 2 factors are analyzed, both individually and collectively, they weigh heavily in favor of
 3 transferring this case.

4 a) The location where the relevant agreements were negotiated and
 5 executed.

6 This factor weighs in favor of transfer. The Disclosure and the Arbitration
 7 Agreement were signed in North Carolina.

8 b) The state that is most familiar with the governing law.

9 Since Smalls claims are brought pursuant to federal law, both districts are equally
 10 familiar with the law applicable to this case. Therefore, this factor is neutral.

11 c) Plaintiff's choice of forum.

12 Although normally this factor would weigh against transfer, that is not the case
 13 here. A plaintiff's choice of forum is afforded substantially less deference where the
 14 plaintiff is not a resident of the forum. *In re Apple, Inc.*, 602 F.3d 909, 913 (8th Cir.
 15 2010); *Barham v. UBS Financial Services*, 496 F.Supp.2d 174, 178 (D.D.C. 2007) (courts
 16 afford "substantially less deference" to plaintiff's choice of forum when the plaintiff is not
 17 a resident of that forum); *Huggins v. Stryker Corp.*, 932 F.Supp.2d 972, 981 (D. Minn.
 18 2013) (plaintiff's choice of forum "is entitled to less deference when the plaintiff is not a
 19 resident of the selected forum and when the underlying events giving rise to the action
 20 occurred outside the forum.").

21 Additionally, a plaintiff's choice of forum is given less weight when the plaintiff
 22 purports to represent a class. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987).
 23 Smalls' complaint seeks class action treatment of his claims, and thus his choice of
 24 forum is entitled to even less weight.

25 Finally, a plaintiff's choice of form is given no weight when there is a valid forum-
 26 selection clause. *Atlantic Marine Const. Co.*, 134 S.Ct. at 581. Here, pursuant to the

1 Arbitration Agreement, the parties agreed to arbitrate claims in the last place Smalls
2 worked, i.e., North Carolina.

3 Accordingly, since Smalls is not a resident of the present venue, because he pled
4 this case as a class action, and because there is an applicable and enforceable forum
5 selection clause, Smalls' choice of forum is to be given no weight.

6 d) The respective parties' contacts with the forum.

7 Here, Labor Ready has contacts with both forums, but Mr. Smalls has no evident
8 contacts with the Western District of Washington. On the other hand, Mr. Smalls has
9 strong contacts with North Carolina. He presently lives and works there. This factor
10 favors transferring the case to North Carolina.

11 e) The contacts relating to the plaintiff's cause of action in the chosen
12 forum.

13 As mentioned, above, all of the events that form the basis of Smalls claims took
14 place in North Carolina. He applied to work for a Labor Ready branch in the state. Smalls
15 received the allegedly defective documents there as well. The background check was
16 initiated in a Labor Ready branch in North Carolina and the results were returned directly
17 to that branch. Accordingly, this factor weighs in favor of transferring the case to North
18 Carolina.

19 f) The differences in the cost of litigation in the two forums.

20 Labor Ready's witnesses with respect to Smalls' application for employment and
21 the background check are in North Carolina. Further, Smalls lives in North Carolina.
22 Therefore, if the case is litigated in North Carolina, both sides are likely to save significant
23 amounts of money due to the fact that witnesses will only have to travel within the state
24 rather than have to travel to Tacoma. Accordingly, this factor weighs in favor of
25 transferring venue to North Carolina.

26
MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 10 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 g) The availability of compulsory process to compel attendance of
2 unwilling non-party witnesses

3 At this time, moving parties are not aware of the need of either side to compel
4 attendance of unwilling non-party witnesses. Therefore, this factor is neutral.

5 h) The ease of access to sources of proof.

6 Labor Ready's documentary evidence in this case is located in the branch in North
7 Carolina. Labor Ready's witnesses to the events underlying Smalls' claims are in North
8 Carolina. Plaintiff lives in North Carolina. This factor weighs in favor transferring the
9 case.

10 Analyzing the factors collectively shows that of the nine factors, five of the factors
11 weigh in favor of transfer while the other four factors are neutral. These factors strongly
12 favor transferring venue to North Carolina.

13 V. CONCLUSION

14 For the reasons stated, Defendants respectfully request that the Court transfer
15 this action to the Charlotte division of the United States District Court for the Western
16 District of North Carolina. In the alternative, if the Western District is not the appropriate
17 district within North Carolina, Defendants request that the Court transfer this action to
18 the appropriate district within North Carolina.

19
20
21
22
23
24
25
26
MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 11 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

1 Dated this 23rd day of April, 2015.

2 GORDON THOMAS HONEYWELL LLP

3
4 By /s/Bradley B. Jones

5 Bradley B. Jones, WSBA No. 17197

6 bjones@gth-law.com

7 Reuben Schutz, WSBA No. 44767

8 rschutz@gth-law.com

9 Attorneys for Defendants TrueBlue, Inc., and
10 Labor Ready Mid-Atlantic, Inc.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 12 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 23, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorneys for Plaintiff Craig Smalls

Clifford A. Cantor
627 208th Ave. SE
Sammamish, WA 98074-7033
Tel: (425) 868-7813
Fax: (425) 868-7870
Email: cliff.cantor@outlook.com

Attorneys for Plaintiff Craig Smalls

Patrick Peluso *pro hac vice*
Steven L. Woodrow *pro hac vice*
Woodrow & Peluso LLC
3900 E. Mexico Ave. Ste. 300
Denver, CO 80210
Tel: (720) 213-0675
Email: ppeluso@woodrowpeluso.com
swoodrow@woodrowpeluso.com

DATED April 23, 2015.

Dorothy Brooks, Legal Assistant

MOTION TO TRANSFER VENUE TO THE WESTERN DISTRICT OF NORTH
CAROLINA - 13 of 13

(C15-5126 RBL)

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
TACOMA, WASHINGTON 98402
(253) 620-6500 - FACSIMILE (253) 620-6565